

January 8, 1993
REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

ORDINANCE PROTECTING VICTIMS OF DOMESTIC VIOLENCE

By report dated November 12, 1992, to the Mayor and City Council, included as Attachment One, The City Attorney recommended against the enactment of subject ordinance which was drafted at the request of then Mayor O'Connor.

The City Attorney expressed two concerns in Attachment One and recommended against enacting the proposed ordinance. The first concern is that the proposed ordinance is, in our view, preempted by state law. California State Penal Code section 12028.5 contains detailed and specific provisions that must be followed when a firearm or other deadly weapon is taken into custody by a peace officer at the scene of a domestic violence incident. The second concern is that the proposed ordinance could be construed as creating a statutory duty resulting in potential civil liability to the City for any breach of that duty, inadvertent or otherwise.

STATUS OF PROPOSED ORDINANCE

The proposed ordinance was introduced on November 16, 1992, as Council Docket Item No. S405. This office was led to believe the matter would be continued pending preparation of a proposed amendment to California State Penal Code section 12028.5 which would mandate seizure of weapons by peace officers at domestic violence scenes. A state legislative proposal was prepared by this office and sent to then Mayor O'Connor and to Judith L. Bauer, Director, Department of Legislative Services. (Attachment Two.) Assemblyman Mike Gotch has submitted the legislative proposal prepared at former Mayor O'Connor's request to the legislative counsel to prepare for introduction. Attachment Three is the Legislative Counsel's digest on the proposed legislation and the author's draft.

Attachment Four, The City Manager's report of January 5, 1993 (Report No. 93-08) indicates that a practical need may be lacking for both the introduced ordinance and the proposed amendment to Penal Code section 12028.5 mandating seizure of weapons. Paragraph Two of the Manager's Report states as

follows:

"Domestic Violence Caseload

During the period of August through October 1992, San Diego officers have responded to 3,879 domestic violence calls. These calls resulted in the seizure of 46 firearms, 115 knives or other cutlery instruments and 410 other dangerous weapons. The remaining cases involved use of hands, fists, feet, etc."

The City Manager's report continues on page three, paragraph five, as follows:

"The existing law is sufficient to accomplish reasonable protection for domestic violence victims. Our officers are trained to evaluate the incident and exercise judgement, with the protection of the victim utmost in mind. This is supported by the number of reports taken and the number of arrests initiated by patrol officers. During August, September and October, our officers have arrested 1,201 suspects in domestic violence calls, or 31% of all domestic violence calls.

CONCLUSION

The conclusions and recommendations of The City Attorney stated in Attachment One are reemphasized. We recommend against enactment of the ordinance. If enacted, this office will approve the ordinance in form only because it is our view that it is preempted.

Unless otherwise directed by the Mayor and Council, this office will continue to provide support for the legislative amendments to California Penal Code section 12028.5, which are being sponsored by Assemblyman Mike Gotch.

Respectfully submitted,
JOHN W. WITT
City Attorney

JMB:jp:513(043.1)
Attachments
RC-93-2